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UNCLAS SECTION 01 OF 04 ALMATY 001083

SIPDIS

NSC for M.A. Hayward  
EUCOM J5-T for Col Airis, DTRA LNO  
SECSTATE for EUR/PRA, CV/SM, ISN/PTR, VCI/SNI  
DTRA for Byrd

SENSITIVE

E.O. 12958: N/A

TAGS: [PARM](#) [EAID](#) [KZ](#)

SUBJECT: KAZAKHSTAN: TAX AND CUSTOMS EXEMPTIONS FOR CTR PROGRAM PARTICIPANTS

Reference: Agreement between the United States of America and

the Republic of Kazakhstan Concerning the Destruction of Silo Launchers of Intercontinental Ballistic Missiles, Emergency Response, and the Prevention of Proliferation of Nuclear Weapons, dated December 13, 1993, and extended December 5, 2000 (U.S.-Kazakhstan CTR Umbrella Agreement), and all of its subsequent related implementing agreements.

1. (SBU) Summary: Embassy Almaty received a letter from Ministry of Finance outlining the ministry's interpretation of tax and customs liabilities for CTR program participants. The letter states that exemptions shall only be provided to those organizations specifically named; that only contractors, not subcontractors, enjoy exemption; and that there is a mechanism in place for providing customs and tax exemptions for recipients of "technical aid." The letter also contains a proposal to amend the agreements to include the names of all technical aid recipients so that the GOK can apply its civil tax and customs codes and provide those recipients with exemptions. See translation of letter at paragraph 5, and request for guidance at paragraph 6.

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Background  
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2. (U) According to the CTR Umbrella Agreement, the U.S. Government is implementing the Cooperative Threat Reduction (CTR) program - also known as the "Nunn-Lugar Program" - in Kazakhstan in order to prevent the spread of weapons of mass destruction through dismantlement activities and consolidation and security programs.

2. (SBU) Since the inception of the CTR program, the Government of Kazakhstan has experienced difficulties in consistently providing exemptions from tax and customs fees for participants of the program. In years past, the GOK has tried solutions such as asking for official lists of contractors and subcontractors in order to provide exemptions to companies being paid by the US Government.

3. (SBU) Recently, the GOK has been very clear during discussions with US Government delegations that it believes that exemption from obligatory payments to the GOK budget is only applicable to those participants clearly named in the umbrella and implementing agreements. As such, during meetings in December 2005 regarding the Biological Weapons Proliferation Prevention (BWPP) program, the interagency working group of the GOK asked the Ministry of Finance to provide written confirmation of its stance, as well as a mechanism for implementing tax exemptions.

4. (SBU) On 14 February 2006, the Defense Threat Reduction Office of Embassy Almaty received a letter from the Ministry of Finance that states Government of Kazakhstan's interpretation of tax and customs liabilities of participants under the Cooperative Threat Reduction (CTR) program's Umbrella Agreement. This letter was not sent via diplomatic note, and the Defense Threat Reduction Office provided a copy to the Ministry of Foreign Affairs upon receipt.

5. (SBU) BEGIN TEXT OF UNOFFICIAL TRANSLATION

To: The Embassy of the United States of America  
No.NK-UMN-1-11/991 February 6, 2006

Re: BWPP

In response to the arising questions of exemption from taxes and from other mandatory charges payable into the state budget of the activities funded by the USG under the Biological Weapons Proliferation Prevention Program (hereinafter, BWPP), the Ministry of Finance of the Republic of Kazakhstan wishes to provide the following information.

BWPP activity is governed by the Agreement between the Department

of Defense of the United States of America and the Ministry of Energy and Mineral Resources of the Republic of Kazakhstan Concerning the Elimination of Infrastructure for Weapons of Mass Destruction of September 22, 1995, in its version current as of June 25, 2004, (hereinafter, the Agreement), which has not been ratified by the Republic of Kazakhstan.

However, the Agreement was concluded to implement the Agreement between the United States of America and the Republic of Kazakhstan Concerning the Destruction of Silo Launchers of Intercontinental Ballistic Missiles, Emergency Response, and the Prevention of Proliferation of Nuclear Weapons, dated December 13, 1993, (hereinafter, the Umbrella Agreement) ratified by Law of the Republic of Kazakhstan No. 328-III of June 3, 2002, Article 3 Paragraph 1 of the Umbrella Agreement stipulates that the Parties may conclude agreements through their executive agents to implement the Umbrella Agreement.

Pursuant to Article 2 Paragraph 5 of the Tax Code of the Republic of Kazakhstan On Taxes and Other Mandatory Payments into the State Budget (the Tax Code), in the event that an International Agreement ratified by the Republic of Kazakhstan establishes guidelines that differ from those set forth in the Tax Code, the guidelines of the International Agreement shall prevail.

Thus, only the benefits which are provided by the Umbrella Agreement shall apply to activities carried out under the Agreement.

Pursuant to Article 9 Paragraph 1 of the Umbrella Agreement, the United States of America, its military and civilian government personnel, contractors and contractors' personnel shall not be liable in connection with activities conducted pursuant to this Agreement to pay any tax, fee, or similar charge imposed by national and local authorities pursuant to laws or regulations of the Republic of Kazakhstan.

Pursuant to Paragraph 2 Article 9 of the Umbrella Agreement, the United States, its military personnel and civilian government personnel, contractors and contractors' personnel may import into the Republic of Kazakhstan any materials required to implement this Agreement. Such importation of materials shall not be subject to any license, other restrictions, tariffs, customs charges, duties, taxes or any other charges imposed by national and local authorities pursuant to the laws and regulations of the Republic of Kazakhstan. The exportation of this same material shall not be subject to any license, or other restrictions, tariffs, customs, duties, taxes or any other charges imposed by national and local authorities pursuant to the laws or regulations of the Republic of Kazakhstan. For the importation and exportation of such material, the Republic of Kazakhstan shall ensure that simplified and prioritized customs procedures are applied.

In accordance with Article 616 of the Civil Code of the Republic of Kazakhstan (hereinafter, CC RK), a party to a contractual agreement shall be deemed to be a contractor, if it commits to perform work pursuant to the tasking by the other party (i.e., the customer), and to deliver the product of this work by an established date.

In accordance with Article 619 Paragraph 1 of the CC RK, a contractor shall have the right to engage other entities (subcontractors) in implementing a contract, unless otherwise provided by law or by the contract. In this case, the contractor is a general contractor vis--vis the customer, and is a customer vis--vis the subcontractor.

Hence, it follows directly from the text of Article 9 of the Umbrella Agreement that the benefits provided in this article are applicable only to the contractors of the United States of America, i.e., only to the entities that have concluded a contract directly with U. S. Department of Defense.

Based on the above, companies that are subcontractors to the contractor and receiving property (work, services) from the contractor free of charge are subject to both taxes and customs charges in accordance with the laws that were in effect at the time the situation arose.

At the same time, the Tax Code of the Republic of Kazakhstan provides several benefits (applicable to corporate income tax, value added tax, and social tax) for property received as a share of chartered capital, or as a grant.

However, in accordance with Article 10 Paragraph 1 Subparagraph 4 of the Tax Code of the Republic of Kazakhstan, a grant is defined as property that is provided to the Republic of Kazakhstan, Government of the Republic of Kazakhstan, legal entities, and individuals free of charge by nations, national governments, international and government organizations, foreign non-government public organizations and foundations who engage in charitable and international activities which do not contravene the Constitution of the Republic of Kazakhstan, and are included in the list established by the GOK, recommended by government

agencies; or property provided to the Republic of Kazakhstan and the Government of the Republic of Kazakhstan by foreign nationals and stateless individuals to accomplish specific goals or objectives.

In addition, in accordance with Article 330 of the Customs Code of the Republic of Kazakhstan, goods except those subject to excise tax (except passenger vehicles specially designated for medical purposes) imported into the customs jurisdiction of the Republic of Kazakhstan or exported from the customs jurisdiction of the Republic of Kazakhstan by nations, national governments, and international organizations as free assistance, for charitable purposes, including technical assistance; and goods purchased using grants provided by nations, national governments, and international organizations identified as such in accordance with the Kazakhstan tax laws shall be exempt from customs charges.

When goods are imported into the territory of the Republic of Kazakhstan as technical assistance, the following documents are required to be submitted in accordance with the Government Decree No. 675 dated August 9, 2003 "On the Authorized Procedure for Submission of Documents for Exemption from Customs Duties and Customs Processing Fees":

- waybill and/or bill of lading and/or confirmation of diplomatic and/or similar legation, stating the name of the program and project requisites (contract for technical assistance) for the implementation of which the imported goods are designated;
- a copy of the project documentation (contract for technical assistance), for which the goods are being delivered.

Upon submitting the abovementioned documents to the Customs agency, the goods imported by the U.S. Department of Defense under BWPP into the territory of the Republic of Kazakhstan are subject to exemption from customs duties.

In addition, considering that other projects will be implemented under this Umbrella Agreement, the Ministry of Finance proposes to initiate amendments to the Umbrella Agreement to designate specific entities with the right to have benefits and preferences.

//signed//

A. Smailov  
Vice-Minister of Finance  
Republic of Kazakhstan

cc: Ministry of Health  
Ministry of Energy and Mineral Resources

END TEXT OF UNOFFICIAL TRANSLATION

16. (U) Post requests coordinated State-DOD guidance on the legal implications of the letter and how to respond.

17. (U) POC for this action is DTRO-A Chief Laura Smiley; Office Tel. (from the U.S.) 011-7-3272-50-49-76; Fax 011-7-3272-50-24-77; E-mail: AlmatyDTRO@state.gov

ORDWAY